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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 203

THE UNITED STATES, PETITIONER,

vs.

JOHN STUART KELLY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 26, 1951.
CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 209

THE UNITED STATES, PETITIONER,

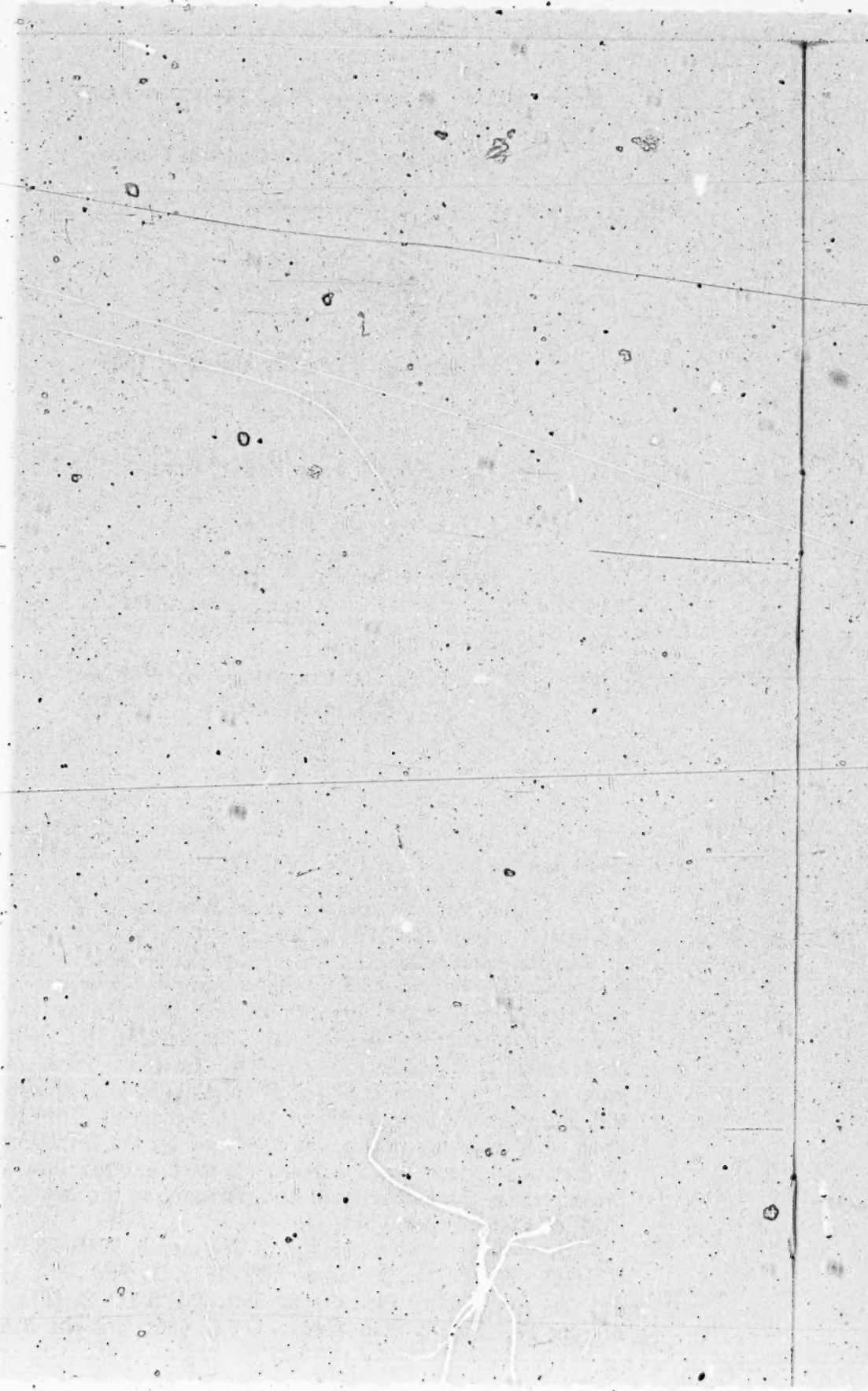
vs.

JOHN STUART KELLY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

INDEX

	Original	Print
Record from the United States Court of Claims	1	1
Petition	1	1
Exhibit No. 1—Settlement certificate	7	4
General traverse	8	5
Stipulation of facts	9	5
Exhibit "A"—Proposed rates of pay for night, Sunday, Holiday and overtime work in the Government Printing Office	17	11
Exhibit "B"—Letter dated April 23, 1948 from Stuart Kelly to John J. Deviny	25	16
Argument and submission of case	34	22
Special findings of fact	35	22
Conclusion of Law	40	27
Opinion, Madden, J.	40	27
Dissenting Opinion, Whitaker, J.	50	35
Stipulation of amount due	52	37
Judgment	53	37
Clerk's certificate (omitted in printing)	55	
Order granting certiorari	57	39



1 In the United States Court of Claims

No. 49299

PETITION—Filed September 2, 1949

JOHN STUART KELLY, ET AL.

2 *Plaintiffs,*

v.

THE UNITED STATES, *Defendant.*

To the Honorable, The Court of Claims:

1. At all times material hereto the plaintiffs were, and now are, citizens of the United States of America.

2. During all or a part of the period from September 1, 1943, to October 15, 1945, each of the above-named plaintiffs was regularly employed as a journeyman printer, bookbinder, electrician, painter, photo-engraver, platemaker, pressman, or stereotyper, by the Government Printing Office, Washington, D. C.

3 3. Plaintiffs were employed by the Public Printer. Their compensation was fixed by wage agreements negotiated by the Public Printer and committees of employees representing the respective trades of the plaintiffs involved herein, namely the journeymen printers, the journeymen bookbinders, the journeymen electricians, the journeymen painters, the journeymen photo-engravers, the journeymen platemakers, the journey pressmen, and the journeymen stereotypers of the Government Printing Office. Each such wage agreement was approved by the Joint Committee on Printing. Such wage agreements were entered into and approved under the authority of and pursuant to the Act of June 7, 1924, 43 Stat. 658, 44 USC. §40.

4. In accordance with the Act of January 6, 1885, 23 Stat. 516, 5 U.S.C. §86, the Act of January 12, 1895, 28 Stat. 607, 44 U.S.C. §44, the Act of May 13, 1938, 52 Stat. 351, 5 U.S.C. §87a, the Act of June 29, 1938, 52 Stat. 1246, 5 U.S.C. §86a, and the Act of De-

cember 26, 1941, 55 Stat. 862, 5 U.S.C. §87b, plaintiffs, at all times material hereto, were entitled to the following holidays with full pay, when prevented or relieved from working solely because of the occurrence of such holidays: New Year's Day, Washington's Birthday, Memorial Day, the 4th of July, Labor Day; Armistice Day, Thanksgiving Day, Christmas Day, and Inauguration Day. In addition plaintiffs were entitled to full pay whenever relieved or prevented from working on any other day declared a holiday by Federal statute or Executive order, and any day on which the departments and establishments of the Government were closed by Executive order.

5. Each of the wage agreements referred to in paragraph 3 of this petition contained the following provision relating to
4 compensation for work performed by plaintiffs on holidays:

> *Holiday Rate.* Employees required to work on a legal holiday or a special holiday declared by Executive order shall be paid at the day rate plus 50% of all the time actually employed in addition to their gratuity pay for the holiday as provided by law . . .

6. During said period from September 1, 1943, to October 15, 1945, plaintiffs were regularly required to and did work on the following holidays, or some of them, all of which were holidays on which plaintiffs were entitled to be released from work with an ordinary day's pay in accordance with the statutes set forth in paragraph 4 of this petition:

September 6, 1943	Labor Day
November 11, 1943	Armistice Day
November 25, 1943	Thanksgiving Day
December 25, 1943	Christmas Day
January 1, 1944	New Year's Day
February 22, 1944	Washington's Birthday
May 30, 1944	Memorial Day
July 4, 1944	Fourth of July
September 4, 1944	Labor Day
November 11, 1944	Armistice Day
November 23, 1944	Thanksgiving Day
December 25, 1944	Christmas Day
January 1, 1945	New Year's Day
January 20, 1945	Inauguration Day
February 22, 1945	Washington's Birthday
May 30, 1945	Memorial Day
July 4, 1945	Fourth of July
September 3, 1945	Labor Day

7. For work performed on the aforementioned holidays, plaintiffs received only the same rate of pay as for work performed on ordinary work days. They did not receive the additional
5 compensation required by the statutes and the "Holiday Rate" provision of the wage agreements set forth in paragraphs 4 and 5 respectively of this petition. Plaintiffs claim additional compensation in accordance with said statutes and wage agreements.

8. On April 23, 1948, plaintiff John Stuart Kelly submitted a claim for holiday compensation to the Acting Public Printer requesting that he be allowed additional compensation for work performed by him on holidays during the period from May 30, 1940, to July 4, 1944, in accordance with the "Holiday Rate" provision of the wage agreement set forth in paragraph 5 of this petition.

9. On March 28, 1949, the Comptroller General issued a settlement certificate on Claim No. 1925381, in which he disallowed plaintiff John Stuart Kelly's claim and certified that no balance was due him from the United States. A copy of said Settlement Certificate is attached hereto and made a part hereof as Exhibit No. 1.

10. Each of the above-named plaintiffs claims and asks judgment for $250.00, more or less, representing compensation due him for work performed on holidays during the period from September 1, 1943, to October 15, 1945. The amounts of each claim shall be subject to exact computation from the records of the Public Printer prior to entry of judgments herein.

11. No other action has been taken on said claims in Congress or by any of the Departments; no persons other than the plaintiffs are the owners thereof or interested therein; no assignments or transfers of these claims, or any part thereof, or interest therein,
6 have been made; the plaintiffs are justly entitled to the amounts as herein claimed from the United States after allowing all just credits and offsets; the plaintiffs have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government.

WHEREFORE, each of the above-named plaintiffs prays judgment against the United States in the amount of $250.00, more or less, subject to exact computation as aforesaid.

POSNER, BERGE, FOX & ARENT,
1200 18th Street, N. W.,
Washington 6, D. C.,
Attorneys for Plaintiffs.

Duly sworn to by Henry J. Fox. Jurat omitted in printing.

7 EXHIBIT No. 1

SETTLEMENT CERTIFICATE

GENERAL ACCOUNTING OFFICE, WASHINGTON 25, D. C.

In correspondence please refer to:
Division: Claims
Claim No.: 1925381

March 28, 1949.
(Date)

Stuart Kelly,
4713 45th Street, N. W.,
Washington 16, D. C.

Sir:

Your claim for additional compensation in the amount of $223.56, alleged to be due for services rendered on holidays falling within your regular tour of duty during the period May 30, 1940 to July 4, 1944, as an employee of the Government Printing Office, Washington, D. C., has been carefully examined, and it is found that no part thereof may be allowed for the reasons hereinafter stated.

It is noted you allege your rate of pay was controlled by the provisions of a wage agreement entered into in 1924, under the authority of the act of June 7, 1924, 43 Stat. 658, which provisions were continued in effect by a wage agreement approved by the Congressional Joint Committee on July 1, 1926, until August 13, 1944, when a superseding agreement was consummated. It is further noted you refer to the Comptroller General's decision of August 23, 1938, 18 Comp. Gen. 191, in which it was held that employees of the Government Printing Office working on a five-day 40-hour week basis, who work on a holiday coming within their regular tour of duty, were entitled only to one day's pay, and not to pay for the holiday and in addition for the time actually worked on the holiday at their regular rates of pay, but you contend this ruling does not apply in your case since your rate of pay was set by the wage agreement and that Public Resolution No. 127,
8 June 29, 1938, 52 Stat. 1246, does not by its terms prohibit or make ineffective provisions of the wage agreement relating to extra compensation and holiday pay.

The pertinent part of the wage agreement in question provided, in effect, that work performed on a holiday shall be paid for at the day rate plus 50 percent which amount shall be in addition to any gratuity pay for the holiday as provided by law. The wage agreement does not create nor purport to create any right to gratuity pay for holidays—that right already having been created by the

holiday gratuity pay statutes in effect when the agreement was entered into and approved by the Joint Committee on Printing—but merely provides that the right to holiday pay at the rates prescribed therein shall be exclusive of and in addition to any gratuity pay provided by law. With the repeal of the holiday gratuity pay statutes by Public Resolution No. 127, *supra*, except as provided therein, gratuity pay for holidays was no longer "provided by law." Therefore, after June 29, 1938, under the terms of the wage agreement itself the maximum compensation payable for work on holidays was the day rate plus 50 percent.

It has been consistently held that payment at rates in excess of the regular daily rate for work on holidays falling within the regular tour of duty of employees paid upon other than an annual basis is in contravention of the 40-hour week statute of 1934 (section 23 of the act of March 28, 1934, 48 Stat. 522). See 13 Comp. Gen. 295; 18 *id.* 191; 21 *id* 217; 25 *id* 584.

I therefore certify that no balance is found due you from the United States.

Respectfully,

LINDSAY C. WARREN,
Comptroller General of the United States.

By: H. R. GRAHAM (Signed)

GENERAL TRAVERSE—Filed October 12, 1949

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

(S.) H. G. MORISON,
Assistant Attorney General.

9 STIPULATION OF FACTS—Filed October 12, 1950

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts hereinafter set forth, shall be deemed to have been proved by competent evidence and shall constitute a part of the record in this case; provided that either party may object to any facts hereinafter stipulated and agreed to on the grounds of irrelevancy and immateriality; and provided further that either party may hereafter adduce material evidence consistent with the facts stipulated herein.

It is agreed by and between the parties that the basic questions of law and fact involved in this action are common to all of the plaintiffs in this action. The facts hereinafter set forth shall be only those facts relevant to the claim of plaintiff John Stuart Kelly,

hereinafter called Kelly, and that upon the determination of the questions of law in the case of Kelly the right of all other plaintiffs involving identical questions of law shall be thereby resolved. In the event of a decision that Kelly is entitled to recover, the amount of his damages and of each of the other plaintiffs involved herein shall be computed from the records of the Public Printer.

1. At all times material hereto plaintiff Kelly has been and is now a citizen of the United States of America.

2. During all or part of the period from September 1, 1943, to October 15, 1945, Kelly was regularly employed as a journeyman printer by the Government Printing Office, Washington, D. C.

3. Kelly was employed by the Public Printer. His compensation was fixed by a wage agreement negotiated by the Public Printer and a committee of employees representing the journeymen printers of the Government Printing Office. Such wage agreement was approved by the Joint Committee on Printing, and originally became effective October 27, 1924. Such wage agreement was entered into and approved under the authority of and pursuant to the Act of June 7, 1924, 43 Stat. 658, 44 U.S.C. Section 40. Such wage agreement was amended from time to time thereafter.

4. The wage agreement and amendments thereto, referred in paragraph 3 of this stipulation, at all times material hereto contained the following provisions [1] relating to the rates of compensation for work performed on night shifts, Sundays, holidays, and during overtime hours:

> *Night rate.* Employees required to work on a regular night shift shall be paid 15 per cent in addition to the day rate for the time actually employed up to 8 hours. An employee whose regular shift consists of part day and part night hours shall be paid entirely at the rate provided for the majority of the time so employed. No employee will be granted extra pay for night work for which he is allowed overtime, Sunday, or legal or special holiday rates of pay.
>
> *Sunday Rate.* Employees required to work on Sunday shall be paid 50 per cent in addition to the day rate for all the time actually employed on said Sunday: *Provided,* that employees

[1] Exhibit A attached hereto and hereby incorporated in this stipulation is a statement of the Public Printer of August 30, 1924, to the committees representing the trades in the Government Printing Office setting forth the proposed rates of pay for night, Sunday, holiday, and overtime work which was incorporated in the wage agreement between the employees and the Public Printer and approved by the Joint Committee on Printing on October 27, 1924.

whose regular shift begins on Saturday night shall be paid at the week night rate, and employees whose shift begins on Sunday night at the Sunday rate, for all the time actually employed on such shift.

Holiday Rate. Employees required to work on a legal holiday or a special holiday declared by Executive Order shall be paid at the day rate plus 50 per cent for all the time actually employed in addition to their gratuity pay for the holiday as provided by law; holiday rate shall apply to all hours of a regular shift beginning work on the holiday, but not to any hours of a regular shift beginning work prior to a holiday and ending on the holiday. Employees required to work more than 4 hours but not exceeding 8 hours on Saturdays on which, by the Executive Order of June 13, 1924, 4 hours shall constitute a day's work, shall be paid their regular rate for time actually so employed in excess of said 4 hours, in addition to pay for 8 hours at their regular rate.

Overtime Rate. Employees on the day or night shifts who are required to work in excess of 8 hours in any period of
12 24 consecutive hours shall receive 50 per cent in addition to the regular day rate for the period of said overtime work. No employee will be granted extra pay for overtime for which he is allowed pay at the Sunday or legal or special holiday rate.

5. During the period from September 5, 1943 to February 23, 1945, Kelly was required to and did work eight hours on each of the following holidays:

September 6, 1943	Labor Day
November 11, 1943	Armistice Day
November 25, 1943	Thanksgiving Day
February 22, 1944	Washington's Birthday
May 30, 1944	Memorial Day
July 4, 1944	Fourth of July
September 4, 1944	Labor Day
November 23, 1944	Thanksgiving Day
January 1, 1945	New Year's Day
February 22, 1945	Washington's Birthday

6. For work performed on the holidays specified in paragraph 5 of this stipulation, Kelly received only the same rate of pay as for work performed on ordinary work days. On the holidays falling between September 6, 1943 and July 4, 1944, both dates inclusive, the day rate for work of the type performed by Kelly was $1.38 per hour, and the night rate was $1.584 per hour. Kelly, who worked on the night shift, was paid at the rate of $1.584 per

hour for all time worked on such holidays. On the holidays specified in paragraph 5 of this stipulation subsequent to July 4, 1944, the day rate for work of the type performed by Kelly was $1.52 per hour, and the night rate was $1.75 per hour. Kelly also worked on the night shift on these holidays, and was paid at the rate of $1.75 per hour for such work.

13 7. On April 23, 1948, Kelly submitted a claim[2] to the Acting Public Printer requesting that he be allowed additional compensation for certain holidays among those set forth in paragraph 5 of this stipulation. A true copy of this claim is attached hereto and marked Exhibit B. Thereafter, this claim was forwarded to the Comptroller General's Office.

8. On March 28, 1949, the Comptroller General issued a Settlement Certificate on Claim No. 1925381, in which he disallowed Kelly's claim and certified that no balance was due him from the United States. The Comptroller General denied the claim for additional compensation for work on said holidays. A true copy of such Settlement Certificate is attached to the petition herein as Exhibit 1.

9. Upon the enactment of section 23 of the act of March 28, 1934 (40-hour week law), the Public Printer on April 9, 1934, requested a decision from the Comptroller General of the United States on the following question:

> Under authority of act of June 7, 1924 (U. S. C., title 44, sec. 40), time heretofore actually worked on Sundays and legal holidays has been considered as overtime and paid at time and one-half rate. In the application of section 23, supra, is such time to be considered as overtime regardless of whether or not 40 hours has been worked in the week concerned, or is such time worked on Sundays and legal holidays a part of the 40 hours to be worked in one week before any overtime may be paid?

14 In his reply (13 Comp. Gen. 295), the Comptroller General on April 23, 1934, stated in material part:

> The legal holidays mentioned in the act of January 12, 1895 (28 Stat. 607), should be included as a part of the 40-hour week for employees of the Government Printing Office (12 Comp. Gen. 21; decision of January 25, 1934, A-35169). Employees who are not required to work on said holidays are

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[2] No other plaintiff filed a claim for additional compensation for work on holidays prior to the petition in this case. Kelly's claim was submitted by himself in his own behalf and did not purport to represent any other claimant or plaintiff in this action.

nevertheless entitled to their regular compensation for the day, and employees not paid on an annual basis, who are required to work on said holidays, are entitled for the time worked on such days, to their regular rate of compensation (not "time and one-half") in addition to the regular pay for the holidays.[3]

Thereafter, and until September 5, 1938, employees of the Government Printing Office who were required to work on a legal holiday were paid for the number of hours worked at their regular rate of compensation, plus gratuity pay for the holiday.

10. After the enactment into law of Public Resolution 127, approved June 29, 1938, the Public Printer requested a decision from the Comptroller General on the following question:

> September 5 next is a legal holiday. Several employees in this office will be required to work on that day. Shall they be paid for the holiday—eight hours—and, in addition for the time actually worked at their rate of compensation? (See Comp. Gen. 13-295.)

The Comptroller General replied as follows (18 Comp. Gen. 191):

> It is understood from question No. 2 that September 5, Labor Day, is within the regular tour of duty of 40 hours per week. Whether the employees work 8 hours or less on that day they will be entitled only to 1 day's pay—not to pay for the holiday and in addition for the time actually worked on the holiday at their regular rates of pay. The cited decision has been rendered inoperative by Public Resolution of June 29, 1938, to this extent.

In accordance with this decision, employees of the Government Printing Office required to work on a legal holiday during the pe-

[3] The Act of April 16, 1880, 21 Stat. 304, provided that employees of the Government Printing Office should receive gratuity pay for five specified holidays whenever they fell on a regular work day. Commencing with the Act of January 12, 1895, per diem, per hour and piece-work employees of the Government Printing Office received gratuity pay for eight specified holidays regardless of whether they fell on a regular work day or on a non-work day. If such employees worked on one of the specified holidays, they received their regular rate of pay plus the holiday gratuity pay. Subsequent to the 1924 wage agreement, until the Comptroller General's decision in 1934 (13 Comp. Gen. 295), such employees received the gratuity pay for holidays when they did not work; whenever they worked on such a holiday, they received one and ½ times the day rate for all hours of work plus the gratuity pay for the holiday.

ried June 29, 1938 to May 28, 1946, inclusive, received pay for 1 day only and no gratuity holiday pay, in addition to the pay for the time actually worked on the holiday. Subsequent thereto, the employees, pursuant to an administrative order of the Public Printer, received their regular rate of pay plus pay for the holiday whenever they worked upon a legal holiday.[4]

16 11. Kelly worked eight hours on the night shift on each of the holidays specified in paragraph 5 of this stipulation. Eight hours is the regular number of hours worked on an ordinary work day. Kelly claims additional compensation is due him in an amount equal to one and one-half times the day rate for all hours worked on each of said holidays.

12. No other action has been taken on this claim in Congress or by any of the Departments, no person other than Kelly is the owner thereof or interested therein; no assignment or transfer of this claim or any part thereof, or interest therein has been made. Kelly has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided abetted, or given encouragement to rebellion against the Government.

(S.) HENRY J. FOX,
Attorney for Plaintiff.
(S.) KENDALL M. BARNES,
Attorney for Defendant.
(S.) H. G. MORISON,
Assistant Attorney General.

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[4] Administrative Order No. 39; May 28, 1946 provided:

To All Employees of the Government Office:

On and after the date of this order any employee of the Government Printing Office who is required to work on a day designated by Federal statute or Executive order as a holiday will be compensated for the time worked at his regular rate of compensation in addition to his holiday pay.

A. E. GIEGENGACK, *Public Printer.*

17 EXHIBIT A TO STIPULATION OF FACTS

Proposed Rates of Pay for Night, Sunday, Holiday, and Overtime Work in the Government Printing Office

Government Printing Office,
Office of the Public Printer,
Washington, August 30, 1924.

To all committees representing trades affected by Public Act No. 276 (the Wage Law), approved June 7, 1924, and to all other employees whose compensation may be determined by the Public Printer in accordance with the provisions of said act.

GENTLEMEN: Notice is hereby given that the Public Printer proposes to recommend or establish, as the case may be, the below stated rates of pay for night, Sunday, holiday, and overtime work by employees of the Government Printing Office who may be entitled to receive such compensation. Committees authorized to represent any trade affected by the proposed compensation are respectfully requested to submit their action on this proposal on or before September 5, 1924. It is the purpose of the Public Printer to present to the Joint Committee on Printing rates of pay for night, Sunday, holiday and overtime work that may require final action by that Committee.

The proposal as to rates of pay for night, Sunday, holiday, and overtime work is submitted at this time to all employees affected thereby in order that the Joint Committee on Printing may have an opportunity to consider such rates for the Government Printing Office as a whole, and that there may be uniformity of action as regards all employees.

18 The proposal of the Public Printer as to night, Sunday, holiday, and overtime rates is as follows:

DAY AND NIGHT SHIFTS

The regular working shift of any day or night force shall be 8 hours. Employees whose regular shift is between the hours of 6 a. m. and 6 p. m. shall be paid the respective day rate for the time actually employed. Employees whose regular shift is between the hours of 6 p. m. and 8 a. m. shall be paid the respective night rate for the time actually employed. In computing rates of pay, fractions of less than one-half cent shall be dropped and of one-half cent or more shall be added.

NIGHT RATE

Employees required to work on a regular night shift shall be paid 15 per cent in addition to the day rate for the time actu-

ally employed up to 8 hours. An employee whose regular shift consists of part day and part night hours shall be paid entirely at the rate provided for the majority of the time so employed No employe will be granted extra pay for night work for which he is allowed overtime, Sunday or legal or special holiday rates of pay.

SUNDAY RATE

Employees required to work on Sunday shall be paid 50 per cent in addition to the day rate for all the time actually employed on said Sunday: *Provided*, That employees whose regular shift begins on Saturday night shall be paid at the week night rate, and employees whose shift begins on Sunday night at the Sunday rate, for all the time actually employed on such shift.

19

HOLIDAY RATE

Employees required to work on a legal holiday or a special holiday declared by Executive order shall be paid at the day rate plus 50 per cent for all the time actually employed in addition to their gratuity pay for the holiday as provided by law; holiday rate shall apply to all hours of a regular shift beginning work on the holiday, but not to any hours of a regular shift beginning work prior to a holiday and ending on the holiday. Employees required to work more than 4 hours but not exceeding 8 hours on Saturdays on which, by the Executive order of June 13, 1924, 4 hours shall constitute a day's work, shall be paid their regular rate for time actually so employed in excess of said 4 hours, in addition to pay for 8 hours at their regular rate.

OVERTIME RATE

Employees on the day or night shifts who are required to work in excess of 8 hours in any period of 24 consecutive hours shall receive 50 per cent in addition to the regular day rate for the period of said overtime work. No employee will be granted extra pay for overtime for which he is allowed pay at the Sunday or legal or special holiday rate.

15 PER CENT EXTRA FOR NIGHT-SHIFT EMPLOYEES

It is proposed that the night employees shall be paid 15 per cent in addition to the day rate. A rate of 12½ per cent for night workers has been approved by the local Typographical Union in its scale agreement with the Washington book and job offices. The local Typographical Union has also agreed to a 10 per cent night

rate in Washington newspaper offices. Scale agreements of typographical unions throughout the country generally fix upon
20 10 per cent as the extra rate for printers employed at night in newspaper and book and job offices. Union pressmen employed in Washington book and job offices receive 15 per cent extra for night work. Many printing offices grant only 5 per cent extra to night workers.

The Bureau of Engraving and Printing pays the same rate to day and night workers. The Naval Establishment, including the Washington Navy Yard, grants civilians employed at night a flat increase of 5 cents an hour over the day rate; thus a navy-yard employee at the day rate of $1 an hour receives $1.05 an hour for night work, or only 5 per cent additional.

Accordingly, it seems evident that the proposed night rate is an adequate and liberal provision for regular night employees of the Government Printing Office. The old rate of 20 per cent was fixed by law many years ago when the basic pay was only 40 cents an hour, so the extra night pay was correspondingly small. Based on a day rate of $1 an hour, the extra night compensation of 20 per cent would be $1.60 for eight hours work or $9.60 per week in excess of the day rate for the same class of work. This is too great a difference in the pay of day and night employees for the same class of work. The commercial scale for night work averages from only $2 to $5 per week more than the day pay.

The 20 per cent night rate was provided for the Government Printing Office years ago chiefly to attract a temporary force of night workers during sessions of Congress and was in the nature of a bonus for such emergency employment. At that time little or no work was done at night except when Congress was in session.

For some years past, however, it has been necessary to
21 employ a regular night force, and undoubtedly the rapidly increasing work of the Printing Office will require a permanent night force hereafter. Therefore, as is here proposed, it is fitting that the Government Printing Office should now fix its night scale more nearly in accord with commercial scales.

Sunday, Holiday, and Overtime Rates

In proposing special rates of pay for Sunday, holiday, and overtime work, an endeavor has been made to adopt general trade customs as far as they could be made to conform to the requirements of the Government service.

The Sunday rate of 50 per cent additional to the week-day rate is the same as heretofore fixed by law and corresponds with the Sunday rate paid by the Naval Establishment and the Bureau of Engraving and Printing. The extra rate for Sunday work applies alike to day and night employees who may be required to work

on Sunday. Inasmuch as work on Sunday is in the nature of overtime, being additional to the regular hours of employment, it is believed that the compensation for Sunday work should be the same as for overtime.

Therefore, the rate proposed has been made the same for both day and night workers instead of allowing Sunday night employees to pyramid their Sunday rate on the regular week-night rate as heretofore. The one rate for Sunday work, day or night, accords with the present practice of the Bureau of Engraving and Printing and the Naval Establishment, including the Washington Navy Yard, which do not allow extra night pay to employees required to work on Sunday.

22 During the last fiscal year employees of the Government Printing Office worked 228,423 hours on Sundays and received $216,749 in compensation for such extra services. Heretofore, Government Printing Office employees required to work on legal and special holidays have been allowed only double time; that is, gratuity pay for the holiday whether they worked or not, and regular pay for the time actually employed on the holiday. The Bureau of Engraving and Printing and the Naval Establishment also grant their employees regular pay plus 50 per cent, in addition to the gratuity pay, when required to work on a legal holiday.

Time and One-Half Extra for Holiday Work

Holiday work is similar to overtime and Sunday work in requiring extra hours of labor, and it would seem proper to compensate such emergency services at the same rate, whether performed on week days, holidays, or Sundays. Accordingly, it is proposed to pay employees of the Government Printing Office for legal and Executive-order holidays, except Saturday half-holidays as hereinafter provided, at the rate of time and one-half for the hours actually employed, in addition to gratuity pay for the holiday as authorized by law.

The night rate does not apply when employees are granted extra holiday pay, which also agrees with the pay schedules of the Bureau of Engraving and Printing and the Naval Establishment. Commercial Printing offices generally pay only time and one-half for holiday work, their employees receiving no compensation for the holiday if they do not work on that day.

23 During the last fiscal year employees of the Government Printing Office worked 67,550 hours on holidays for which they received $42,047 of extra compensation.

Saturday half-holiday pay for summer months is continued as at present. The employees receive 8 hours' pay for 4 hours' work under authority of the Executive order. If required to work the full 8 hours on Saturday, the extra 4 hours' service is compensated

for at the regular per hour rate. Thus an employee working 8 hours on Saturdays which the President has designated for half-holidays, receives time and one-half therefor. Saturday night employees will be allowed the night rate for their regular shift. The overtime rate applies to all hours worked by Saturday shifts in excess of 8 hours.

Prior to the authority granted by the new wage law, ... was impossible to allow extra compensation for overtime work by employees of the Government Printing Office. Congress has now rectified this serious discrimination against Printing Office employees, and accordingly, it is proposed to pay them the customary trade rate of 50 per cent additional for work in excess of 8 hours in any period of 24 consecutive hours. Night rate will not be added to the new overtime rate, which again conforms to the rule of the Bureau of Engraving and Printing and the Naval Establishment against the pyramiding of extra-pay rates.

The overtime rate will mean a considerable increase in the pay of many employees. In the fiscal year 1924 there were 64,227 hours of week-day overtime for which employees received $44,190 extra compensation; in the preceding year, the week-day overtime amounted to 119,416 hours for which $76,188 extra compensation was paid.

UP-AND-DOWN RATING FOR TEMPORARY CHANGES

24 Employees may be transferred from one occupation or position to another within their respective trades and compensated at the rate provided therefor. If such transfers are temporary to meet the exigencies of the work, employee shall continue to receive his regular rate of pay, unless the work to which he is assigned carries a higher rate, in which event he shall receive the higher rate if so employed for 3½ or more continuous hours in any one day. If the transfer carries a lower rate of pay, the employee shall continue to receive his regular rate, unless employed at lower rate work for 8 or more continuous hours in any one day, in which event he shall receive the rate of pay provided for the work performed.

The compensation for night, Sunday, holiday, and overtime work, as decided upon by the Joint Committee on Printing in accordance with Public Act No. 276, Sixty-seventh Congress, will be made applicable to all employees of the Government Printing Office who may be entitled to such compensation.

Respectfully,

(S.) GEORGE H. CARTER,
Public Printer.

25 EXHIBIT B TO STIPULATION OF FACTS

4713 45th Street, N. W.
Washington 16, D. C.
April 23, 1948.

Mr. John J. Deviny
Acting Public Printer
United States Government Printing Office
Washington 25, D. C.

DEAR SIR:

This is to make claim for holiday pay in the amount of $223.56 for work performed on legal holidays from May 30, 1940, to July 4, 1944, inclusive.

This claim is based upon a provision in wage agreements setting wages of journeyman printers in the Government Printing Office, entered into between the Public Printer and committees representing the journeyman printers of the Government Printing Office, said wage agreements having been entered into by authority of the act of June 7, 1924 (43 Stat. 658).

On each of the following-named holidays claimant worked as a journeyman printer in the Government Printing Office the number of hours set forth:

May 30, 1940	4 hours	February 22, 1943	8 hours
January 1, 1942	8 hours	September 6, 1943	8 hours
February 23, 1942	8 hours	November 11, 1943	8 hours
September 7, 1942	8 hours	November 25, 1943	8 hours
November 11, 1942	8 hours	February 22, 1944	8 hours
November 26, 1942	8 hours	May 30, 1944	8 hours
January 1, 1943	8 hours	July 4, 1944	8 hours

The following is the pertinent provision of the wage agreement which became effective upon approval by the Congressional Joint Committee on Printing as of October 29, 1924:

26 "*Holiday rate.*—Employees required to work on a legal holiday or a special holiday declared by Executive order shall be paid at the day rate plus 50 percent for all the time actually employed in addition to their gratuity pay for the holiday as provided by law * * *"

The above-cited provision was continued in effect by the following section of the wage agreement which became effective upon approval by the Congressional Joint Committee on Printing as of July 1, 1926:

"The existing rates of pay and regulations for night, Sunday, holiday, and overtime work * * * shall continue."

Claimant's day rate of pay for the period encompassing the above-listed holidays was $1.38 per hour. His holiday rate calculated in accordance with the terms of the wage agreement was $2.07 per hour in addition to the regular hourly rate of pay.

For no part of the 168 hours worked on the stated holidays did claimant receive any compensation in addition to his regular daily pay.

Wherefore, claim is made for the sum of $223.56.

It is submitted that the cited provision of the wage agreement was in effect during the time for which claim is made for holiday pay.

No wage agreement superseding the agreement of July 1, 1926 was consummated until August 13, 1944. (It will be noted that no recovery is sought for work performed on holidays subsequent to that date.) Therefore, unless superseded by statute, the holiday-pay provision remained in full force and effect during the time covered by this claim.

27 In the act of June 30, 1932 (Public Law 212, 72d Cong.) we find that holiday pay was limited as follows, under the heading "Overtime compensation":

> "Sec. 211. (a) During the fiscal year ending June 20, 1933—
> "(1) No officer or employee of the Government shall be allowed or paid a higher rate of compensation for overtime work (either day or night) or for work on Sundays and holidays."

This section was continued in effect by section 4 (a) of the act of March 3, 1933 (Public Law 428, 72d Cong.). But it was repealed by section 4 (d) of the act of March 20, 1933 (Public Law 2, 73d Cong.).

Thus, the holiday-pay provision of the wage agreement, having been temporarily suspended, became again effective as of April 1, 1933.

Claimant is, of course, not unaware of the Comptroller General's decision of August 23, 1938 (18 Comp. Gen. 191), that because of Public Resolution No. 127, June 29, 1938 (52 Stat. 1246) employees of the Government Printing Office working on a 5-day, 40-hour-week basis who work on a holiday within the regular tour of duty are entitled only to 1 day's pay, and not to pay for the holiday and in addition for the time actually worked on the holiday.

Claimant contends that as to him this ruling is in error—that his rate of pay for work performed on holidays was set by a wage agreement and said public resolution does not by its terms or by any logical inference of congressional intent prohibit or make ineffective a provision of a wage agreement relating to extra compensation for holiday work, which said provision was in force prior to the passage of the resolution.

28 In fairness to the Comptroller General it must be stated that it does not appear from a careful reading of his decision that he was aware of or had access to the wage agreement referred to.

The resolution on which the Comptroller General's decision was made is as follows:

> "Hereafter, whenever regular employees of the Federal Government, whose compensation is fixed at a rate per day, per hour, or on a piece-work basis, are relieved or prevented from working solely because of the occurrence of a holiday, such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Christmas Day, or any other day declared a holiday by Federal statute or Executive order, or any day on which the departments and establishments of the Government are closed by Executive order, they shall receive the same pay for such days as for other days on which an ordinary day's work is performed.
>
> "Sec. 2. The joint resolution of January 6, 1885 (U. S. C., title 5, sec. 86), and all other laws inconsistent or in conflict with the provisions of this Act are hereby repealed to the extent of such inconsistency or conflict."

The joint resolution of January 6, 1885, "repealed to the extent of such inconsistency or conflict" is as follows:

> "The employees of the Navy Yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty in Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The 1st day of January, the 22d day of February, the 4th day of July, the 25th day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay
> 29 as on other days." (23 Stat. 516.)

Note the inconsequential difference in the wording of the two statutes:

Employees of the category including claimant—

> (1) "shall be allowed (setting forth holidays) and shall receive the same pay as on other days." (23 Stat. 516.)

(2) whenever relieved or prevented from working solely because of the occurrence of a holiday—

> "shall receive the same pay for such days as for other days on which an ordinary day's work is performed." (Joint resolution of June 29, 1938.)

Neither statute specifically grants extra pay for work actually performed on holidays, nor, on the other hand, does either statute specifically forbid such pay, assuming, of course, that such pay was called for in a wage agreement legally arrived at. And, by reason of a wage agreement valid under the former statute, claimant did receive extra pay for work performed on holidays prior to June 29, 1938.

If the Comptroller General had been familiar with the holiday-pay provision of the wage agreement of July 1, 1926, upon what basis could he have ruled that there was a difference in meaning between the phrase "shall receive the same pay as on other days" and "shall receive the same pay for such days as for other days on which an ordinary day's work is performed"—a difference in meaning such that under the former phrase a legal provision in a wage agreement requiring extra pay for work performed on holidays was superseded?

Clearly there is no language in the joint resolution of June 29, 1938, specifically superseding and making ineffective an agreement in force at the time of its enactment relating to extra pay for work performed on holidays.

And a review of the legislative history of the joint resolution of June 29, 1938, will reveal that there is absolutely no basis for reading such an interpretation into the resolution.

The said joint resolution was a House Civil Service Committee substitute for a resolution to pay per diem employees of the Federal Government for the Executive-order holiday of December 24, 1937, since there was no statutory provision authorizing pay to such employees for holidays declared by Executive order.

The substitute measure was suggested by the Civil Service Commission to give statutory authority for such payments as a general practice and remove the discrimination against per diem employees of the Federal Government.

In House Report No. 2683, Seventy-fifth Congress, it is stated:

> "The President by Executive Order No. 7763 of December 6, 1937, excused Federal employees from duty on December 24, 1937 (Christmas Eve Day). The accounting authorities of the Government have held that, in the absence of specific legislation, regular employees whose compensation is fixed at a rate per day, per hour, or on a piece-work basis lose pay for that day. This joint resolution was originally introduced to give those employees, who lost their pay for the holiday granted by the Executive order, their compensation for that day. The resolution was referred to the Civil Service Commission and the Bureau of the Budget for consideration and

report and both reported favorably and suggested the
31 amendment as outlined above in order to have a permanent law to take care of such similar situations that may arise in the future."

The letter of the Civil Service Commission, included in the printed report, reads as follows:

"United States Civil Service Commission,
Washington, D. C., February 15, 1938

"Hon. Robert Ramspeck,
"Chairman, Committee on the Civil Service,
"House of Representatives.

"Dear Mr. Chairman:

"In further response to your request of January 24, for report on House Joint Resolution 551, providing compensation for certain employees for December 24, 1937, the Commission has the honor to advise you that the President by Executive Order No. 7763 of December 6, 1937, excused Federal employees from duty on December 24, 1937. It is believed that the President had in view that the benefits of the holiday be accorded to all classes of employees to the greatest extent possible. The accounting authorities, however, have held that in the absence of specific legislation the regular employees of the Federal Government whose compensation is fixed at a rate per day, per hour, or on a piece-work basis lose pay for that day. This has resulted in discrimination against these groups of Federal employees.

"The proposed joint legislation provides for the payment of compensation to these employees to cover the single day, December 24, 1937; but there is the broader question involved of securing statutory authority for such payments as a general practice and thus obviate the necessity for special resolutions by Congress. Such a resolution, for example, was required last year to provide payment for these same classes
of employees in Washington, D. C., who were excused
32 from duty on January 20, 1937, the date of the inauguration of the President.

"It is believed that general legislation in the following phraseology would give permanent statutory authority for payments under the circumstances indicated:

"'Hereafter, whenever regular employees of the Federal Government, whose compensation is fixed at a rate per day, per hour, or on a piece-work basis, are relieved or prevented from working solely because of the occurrence of a holiday.

such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, or any other day declared a holiday by Federal statute or Executive order, or any day on which the Departments and establishments of the Government are closed by Executive order, they shall receive the same pay for such days as for other days on which an ordinary day's work is performed.

"'Sec. 2. The joint resolution of January 6, 1885 (U. S. C., Title 5, sec. 86), and all other laws inconsistent or in conflict with the provisions of this Act are hereby repealed to the extent of such inconsistency or conflict.'

"The Commission is advised by the Bureau of the Budget that the joint resolution and the proposed joint resolution are not contrary to the program of the President.

"By direction of the Commission.

"Very respectfully,

"Harry B. Mitchell, President."

(The full report of the Civil Service Committee of the House of Representatives is attached hereto as Exhibit A.)[5]

33 Also one will look in vain to the debate in the House of Representatives for any "intention of Congress" to abrogate by this resolution a provision of a legal wage agreement setting forth the rate of extra compensation for work performed on holidays.

In the Congressional Record of June 15, 1938 (vol. 83, No. 8, p. 9466) is found:

"Mr. Ramspeck. This covers the lowest paid group of employees in the Government services. It is only those who work on a per diem basis. For instance, last Christmas Eve the President excused all Government employes from rendering any service. His Executive order, of course, applied to every employee in the Government service. Those who are working on a monthly salary got their pay for Christmas Eve, but those who work on a per diem were forced to take the day off, and they lost the day's pay. This is simply to correct that situation.

* * * * * *

"Mrs. Rogers of Massachusetts. This simply prevents an unintentional discrimination.

"Mr. Ramspeck. That is correct. The per diem employees are unintentionally discriminated against."

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[5] Exhibit A referred to herein was attached to Stuart Kelly's letter, and has been omitted from this stipulation.

The resolution passed the Senate without debate.

Since, as has been demonstrated, the provision of the wage agreement upon which claim is based was not superseded by any subsequent wage agreement during the period encompassing the holidays above set forth, and since there is no statutory prohibition of extra compensation in accordance with such provision, it is respectfully submitted that this claim should be granted.

Very truly yours,

STUART KELLY,
Proof Section, Night.

34 ARGUMENT AND SUBMISSION OF CASE

On March 5, 1951, the case was argued and submitted on merits by Mr. Henry J. Fox, for plaintiff, by Mr. Kendall M. Barnes, for defendant.

35 **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Madden, J., Dissenting Opinion by Whitaker, J., and Jones, Chief Judge**—Filed April 3, 1951

Mr. Henry J. Fox for the plaintiff. *Messrs. Posner, Berge, Fox* and *Arent* were on the briefs.

Mr. Kendall M. Barnes, with whom was *Mr. Acting Assistant Attorney General Newell A. Clapp*, for the defendant.

The Court, upon a stipulation of facts entered into by the parties, and the argument and briefs of counsel, makes the following

SPECIAL FINDINGS OF FACT

1. At all times material hereto plaintiff Kelly has been and is now a citizen of the United States of America.

2. During all or part of the period from September 1, 1943, to October 15, 1945, Kelly was regularly employed as a journeyman printer by the Government Printing Office, Washington, D. C.

3. Kelly was employed by the Public Printer. His compensation was fixed by a wage agreement negotiated by the Public Printer and a committee of employees representing the journeymen printers of the Government Printing Office. This wage agreement was approved by the Joint Committee on Printing, and originally became effective October 27, 1924. It was entered into and approved under the authority of and pursuant to the Act of June 7,
36 1924, 43 Stat. 658, 44 U.S.C. Section 40. It was amended from time to time thereafter.

4. The wage agreement and amendments thereto referred to in Finding 3, at all times material hereto contained the following

provisions relating to the rates of compensation for work performed on night shifts, Sundays, holidays, and during overtime hours:

Night rate. Employees required to work on a regular night shift shall be paid 15 per cent in addition to the day rate for the time actually employed up to 8 hours. An employee whose regular shift consists of part day and part night hours shall be paid entirely at the rate provided for the majority of the time so employed. No employee will be granted extra pay for night work for which he is allowed overtime, Sunday, or legal or special holiday rates of pay.

Sunday rate. Employees required to work on Sunday shall be paid 50 per cent in addition to the day rate for all the time actually employed on said Sunday: *Provided*, that employees whose regular shift begins on Saturday night shall be paid at the week night rate, and employees whose shift begins on Sunday night at the Sunday rate, for all the time actually employed on such shift.

Holiday rate. Employees required to work on a legal holiday or a special holiday declared by Executive Order shall be paid at the day rate plus 50 per cent for all the time actually employed in addition to their gratuity pay for the holiday as provided by law; holiday rate shall apply to all hours of a regular shift beginning work on the holiday, but not to any hours of a regular shift beginning work prior to a holiday and ending on the holiday. Employees required to work more than 4 hours but not exceeding 8 hours on Saturdays on which, by the Executive Order of June 13, 1924, 4 hours shall constitute a day's work, shall be paid their regular rate for time actually so employed in excess of said 4 hours, in addition to pay for 8 hours at their regular rate.

Overtime rate. Employees on the day or night shifts who are required to work in excess of 8 hours in any period of 24 consecutive hours shall receive 50 per cent in addition to the regular day rate for the period of said overtime work. No employee will be granted extra pay for overtime for which he is allowed pay at the Sunday or legal or special holiday rate.

37 5. During the period from September 5, 1943, to February 23, 1945, Kelly was required to and did work eight hours on each of the following holidays:

September 6, 1943	Labor Day
November 11, 1943	Armistice Day
November 25, 1943	Thanksgiving Day
February 22, 1944	Washington's Birthday
May 30, 1944	Memorial Day
July 4, 1944	Fourth of July
September 4, 1944	Labor Day
November 23, 1944	Thanksgiving Day
January 1, 1945	New Year's Day
February 22, 1945	Washington's Birthday

6. For work performed on the holidays specified in Finding 5, Kelly received only the same rate of pay as for work performed on ordinary work days. On the holidays falling between September 6, 1943, and July 4, 1944, both dates inclusive, the day rate for work of the type performed by Kelly was $1.38 per hour, and the night rate was $1.584 per hour. Kelly, who worked on the night shift, was paid at the rate of $1.584 per hour for all time worked on such holidays. On the holidays recited in Finding 5 which occurred subsequent to July 4, 1944, the day rate for work of the type performed by Kelly was $1.52 per hour, and the night rate was $1.75 per hour. Kelly also worked on the night shift on these holidays, and was paid at the rate of $1.75 per hour for such work.

7. On April 23, 1948, Kelly submitted a claim[2] to the Acting Public Printer requesting that he be allowed additional compensation for certain holidays among those set forth in finding 5. A true copy of this claim is attached to the stipulation filed herein, and is made a part hereof by reference. Thereafter, this claim was forwarded to the Comptroller General's Office.

8. On March 28, 1949, the Comptroller General issued a Settlement Certificate on Claim No. 1925381, Kelly's claim, in
38 which he disallowed the claim and certified that no balance was due him from the United States. A true copy of the Settlement Certificate is attached to the petition herein, and is incorporated herein by reference.

9. Upon the enactment of section 23 of the act of March 28, 1934 (40-hour week law), the Public Printer on April 9, 1934, requested

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[2] No other plaintiff filed a claim for additional compensation for work on holidays prior to the petition in this case. Kelly's claim was submitted by himself in his own behalf and did not purport to represent any other claimant or plaintiff in this action.

a decision from the Comptroller General of the United States on the following question:

> Under authority of act of June 7, 1924 (U. S. C., title 44, sec. 40), time heretofore actually worked on Sundays and legal holidays has been considered as overtime and paid at time and one-half rate. In the application of section 23, *supra*, is such time to be considered as overtime regardless of whether or not 40 hours has been worked in the week concerned, or is such time worked on Sundays and legal holidays a part of the 40 hours to be worked in one week before any overtime may be paid?

In his reply (13 Comp. Gen. 295), the Comptroller General on April 23, 1934, stated in material part:

> The legal holidays mentioned in the act of January 12, 1895 (28 Stat. 607), should be included as a part of the 40-hour week for employees of the Government Printing Office (12 Comp. Gen. 21; decision of January 25, 1934, A-35169). Employees who are not required to work on said holidays are nevertheless entitled to their regular compensation for the day, and employees not paid on an annual basis, who are required to work on said holidays, are entitled for the time worked on such days, to their regular rate of compensation (not "time and one-half") in addition to the regular pay for the holidays.[3]

Thereafter, and until September 5, 1938, employees of the Government Printing Office who were required to work on a legal holiday were paid for the number of hours worked at their regu-
39 lar rate of compensation, plus pay for the holiday.

10. After the enactment into law of Public Resolution 127, approved June 29, 1938, the Public Printer on August 15, 1938, re-

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[3] The Act of April 16, 1880, 21 Stat. 304, provided that employees of the Government Printing Office should receive pay for five specified holidays whenever they fell on a regular work day. Commencing with the Act of January 12, 1895, per diem, per hour and piecework employees of the Government Printing Office received pay for eight specified holidays regardless of whether they fell on a regular work day or on a non-work day. If such employees worked on one of the specified holidays, they received their regular rate of pay plus the holiday pay. Subsequent to the 1924 wage agreement, until the Comptroller General's decision in 1934 (13 Comp. Gen. 295), such employees received pay for holidays when they did not work; whenever they worked on such a holiday, they received one and ½ times the day rate for all hours of work plus the holiday pay.

quested a decision from the Comptroller General on the following question:

> September 5 next is a legal holiday. Several employees in this office will be required to work on that day. Shall they be paid for the holiday—eight hours—and, in addition for the time actually worked at their rate of compensation? (See Comp. Gen. 13-295.)

The Comptroller General on August 23, 1938, replied as follows (18 Comp. Gen. 191):

> It is understood from question No. 2 that September 5, Labor Day, is within the regular tour of duty of 40 hours per week. Whether the employees work 8 hours or less on that day they will be entitled only to 1 day's pay—not to pay for the holiday and in addition for the time actually worked on the holiday at their regular rates of pay. The cited decision has been rendered inoperative by Public Resolution of June 29, 1938, to this extent.

In accordance with this decision, employees of the Government Printing Office required to work on a legal holiday during the period June 29, 1938 to May 28, 1946, inclusive, received pay for 1 day only and no holiday pay in addition to the pay for the time actually worked on the holiday. Subsequent to May 28, 1946, the employees, pursuant to an administrative order of the Public Printer, received their regular rate of pay plus pay for the holiday whenever they worked upon a legal holiday.[4]

11. Kelly worked eight hours on the night shift on each of the holidays recited in Finding 5. Eight hours is the regular number of hours worked on an ordinary work day. Kelly claims additional compensation is due him in an amount equal to one and one-half times the day rate for all hours worked on each of said holidays.

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[4] Administrative Order No. 39; May 28, 1946, provided:

To All Employees of the Government Printing Office:

On and after the date of this order any employee of the Government Printing Office who is required to work on a day designated by Federal statute or Executive order as a holiday will be compensated for the time worked at his regular rate of compensation in addition to his holiday pay.

A. E. GIEGENGACK,
Public Printer.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes that as a matter of law the plaintiff is entitled to recover.

The entry of judgment will be suspended to await the filing of a stipulation of the parties showing the amount to which he is entitled.

Opinion

Madden, *Judge*, delivered the opinion of the Court:

This is a suit brought by 614 employees of the Government Printing Office to recover additional compensation for work performed by them on holidays during the period from September 1, 1943 to October 15, 1945. Pursuant to Rule 9 (a) of the Court, the parties have stipulated the facts as to one of the plaintiffs only, John Stuart Kelly, and have further stipulated that the decision on Kelly's claim will be determinative of all common questions of law and fact involved in the claims of the 613 other plaintiffs.

If one is paid by the year, or the month or the week, and is fortunate enough to have a holiday, it does not reduce the amount of his pay check. But if he is paid by the day or the hour, the natural consequence of his not working on a holiday is that he gets paid for one less day than he would have been paid for if he had worked on the holiday. This normal result can be changed by agreement of the employer and the employees, or by law. It is frequently provided in union agreements with employers that workmen who are paid by the day or the hour should have certain holidays off, but should be paid as if they had worked. Under such an agreement, the workman receives as much pay at the end of a week in which there was a holiday as he receives at the end of a week in which there was no holiday.

The Government has both kinds of employees, those, mostly white collar employees, who are paid by the year, and craftsmen who are paid by the day or the hour. As to the per annum
41 employees, when by law certain days were made holidays, their pay was not affected. But the per diem and per hour employees lost their wages for the day off, until special provision was made that they should be paid for it.

By the Act of April 16, 1880, 21 Stat. 304, it was provided that employees of the Government Printing Office should be paid for five named holidays provided other Government employees were paid for those days. The proviso seems to have been interpreted to mean "if the holiday fell on a day which would otherwise have been a working day." The Joint Resolution of January 6, 1885, No. 5, 23 Stat. 516, as amended by the Joint Resolution of February

23, 1887, No. 6, 24 Stat. 644, 5 U. S. C. 86, granted five named holidays to all *per diem* employees of the Government, and said that the employees should "receive the same pay as on other days". The Act of January 12, 1895, C. 23, Section 46, 28 Stat. 607, 44 U.S.C. 44 granted eight named holidays "with pay" to employees of the Government Printing Office. The parties have stipulated that, beginning with the Act of 1895, Government Printing Office employees were paid for these holidays whether the holidays fell on what would otherwise have been a work day or not. This fact is important in a relation which will appear hereinafter. The parties have further stipulated that, apparently beginning about 1895, if a Government Printing Office employee worked on a holiday, he received a regular day's pay in addition to the holiday statutory pay. This administrative construction of the 1895 Act was confirmed by the Comptroller of the Treasury in 1901, 8 Comp. Treas. 322, and in 1906, 13 Comp. Treas. 40. This Court, in a dictum in *Adams* v. *United States*, 42 C. Cls. 191, 212, in 1907 agreed with those rulings.

The practice just recited was followed until October 27, 1924, when, in a wage agreement negotiated between the Public Printer, who was the head of the Government Printing Office, and a committee of the employees, it was provided that employees required to work on a legal holiday should be paid at time and one-half the day rate in addition to their "gratuity pay" for the holiday as provided by law. The only change effected by the agreement was the addition of the half time to the straight time which the employees were already receiving when they worked on a holiday, in
42 addition to the statutory pay for the holiday which they had been receiving, and continued to receive, whether they worked or not. The word "gratuity" used in the agreement was inaccurate. It was no more a gratuity or tip to these employees than it is to any other employee, public or private, to have a holiday off without reduction of his pay. It is a part of what he agreed to, or of what the law gives him, and he is as much entitled to it as he is to the rest of his pay.

The 1924 agreement was adhered to until 1934, when, under a ruling of the Comptroller General, it was departed from by the Government in a way prejudicial to the employees, which departure constitutes one branch of the claim involved in this case, and will be discussed hereinafter. At the moment we merely say that, beginning in 1934, the practice went back to what it was before 1924, that is, that the employee who worked on a holiday was paid straight time for his work, in addition to the statutory holiday pay which he would have received even if he had not worked.

On December 6, 1937, the President, by Executive Order No. 7763, excused all Federal employees from work on December 24,

1937. Employees who had per annum salaries were, of course, paid their salaries without deduction for that day off. But employees paid by the day received no pay for that day, so the Comptroller General ruled, because that day was not one of the eight holidays named in the statute giving such employees holidays with pay. A House Joint Resolution, No. 551, was introduced to provide that per diem employees who had not worked on December 24, 1937, should be paid. The House Committee on the Civil Service requested the comments of the Civil Service Commission on the proposed legislation. The reply of the President of the Commission is quoted in the report of the House Committee. H. R. No. 2683, 75th Cong., 3d Sess. 5 (1938). His reply suggested that, instead of enacting special legislation to pay employees each time that a holiday was declared by Executive Order, a permanent statute should provide that, in addition to the holidays named in existing statutes, any day declared a holiday by Executive Order should be a paid holiday for all Federal employees whose compensation is fixed on a per diem, per hour, or piece-work basis.

43 The House Committee report referred to above also quoted the letter decision which the Acting Comptroller General had given to the Secretary of the Navy on December 20, 1937, to the effect that per diem employees could not, under existing legislation, be paid for the December 24, 1937, holiday proclaimed by Executive Order. In that decision it was pointed out that such employees, under existing legislation, were often paid for holidays which occurred on Saturdays or Sundays when the employees would not have worked or been paid if the day had not been a holiday. In that regard the per diem employees were treated better than per annum employees, since, although they worked only the same number of days in such weeks as the per annum employees, they drew one more day's pay in such weeks than they did in other weeks. In other words, the more occurrence of the holiday, although they did not work on the holiday, increased their pay for the week.

The letter from the Civil Service Commission, referred to above, contained a suggested text for the new legislation, which text was adopted verbatim by the House Committee, and became Public Resolution No. 127, 75th Cong., 3d Sess. approved June 29, 1938; 52 Stat. 1246; 5 U. S. C. 86a, reading as follows:

> Hereafter, whenever regular employees of the Federal Government, whose compensation is fixed at a rate per day, per hour, or on a piece-work basis, are relieved or prevented from working solely because of the occurrence of a holiday, such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, or any other day declared a holiday by Federal statute

or Executive order, or any day on which the Departments and establishments of the Government are closed by Executive order, they shall receive the same pay for such days as for other days on which an ordinary day's work is performed.

SEC. 2. The joint resolution of January 6, 1885 (U. S. C., Title 5, sec. 86), and all other laws inconsistent or in conflict with the provisions of this Act are hereby repealed to the extent of such inconsistency or conflict.

As shown in Finding 10, on August 15, 1938, the Public Printer requested the opinion of the Comptroller General as to whether employees who would be required to work on September 5,
44 Labor Day, one of the legal holidays named in the statute, might be paid for the day, in addition to the holiday pay that they would receive if they did not work. The Comptroller General on August 23, replied in the negative, 18 Comp. Gen. 191, saying that the former practice was forbidden by the June 29, 1938, legislation. He said that employees required to work on a holiday were not "relieved or prevented from working solely because of the occurrence of the holiday" within the meaning of the 1938 statute. Pursuant to the Comptroller General's ruling, the plaintiffs, employees in the Government Printing Office, who have been required to work on holidays have received exactly the same pay as those who were not required to work.[1] This is obviously surprising. Our problem is to determine whether it is lawful.

One has immediate doubts as to whether Congress, in 1938, intended to take away from this class of Government employees these rights which they had enjoyed at least since 1895. And when one examines the origin and purpose of the legislation, he finds not the remotest intimation of any such intent. The resolution as originally introduced provided merely that per diem employees should be paid for the December 24, 1937, special holiday. It was amended so that it would serve as permanent legislation for all such occasions. The Civil Service Commission and the House Committee in enlarging the scope of the resolution obviously had noted the Comptroller General's comment, quoted in the committee report, that the existing legislation had been so interpreted as to give employees pay for a holiday coming on a day when they would not have worked anyway. To prevent that unduly generous treatment, the language "whenever * employees * * * are relieved or prevented from working solely because of the occurrence of a holiday" was inserted. The words were apt for that purpose. Hence we are not asked by the plaintiffs to disregard,

[1] But see note 4 to Finding 10.

or nullify, words of a statute on the ground that Congress used them inadvertently. They had a purpose and were, for that purpose well chosen. We are asked only to hold that they should not be given an additional application, which, taken literally,
45 they could receive, when all the indications are that they were not meant to have it.

With regard to its per diem and per hour employees, the so-called wage board employees, the Government is in competition with private employers, and attempts to keep its wages and working conditions in step with those in private enterprise. It is completely unthinkable that the owner of a printing shop could, by practice, or by contract, maintain the policy as to holiday pay which the Government here seeks to attribute to Congress. Such an employer might, and many employers did, in 1938, have a policy of not paying for holidays not worked. If the holiday was worked, it was paid for. Some such employers then, and most of them now have contracts with their employees providing for paid holidays, but in all such contracts there is a provision that if the holiday is in fact worked, it will be paid for again, usually at premium pay, and in addition to the holiday pay. But in no case which we have heard of, or can imagine, could an employer maintain a practice whereby an employee who worked on a holiday received merely the same pay as one who did not work.

This being the situation, we think that the administrative officers of the Government and the courts have no duty, and indeed no right, to attribute to Congress an intention which, it is morally certain, Congress did not have, by giving to words which Congress used for one obvious purpose, an additional application which, taken literally, they might support. The evil which Congress meant to cure by the words it used, it cured. The additional effect contended for by the Government would destroy a practice which no one had ever even intimated to be an evil, and which responsible officials had, for more than forty years regarded as just and necessary.

The Government suggests that the fact that per annum employees at that time, received no extra pay when they were required to work on a holiday was a discrimination, which the Government's interpretation would eliminate. But that difference had existed for some forty-five years, no mention had been made of it in connection with this legislation, and there is no basis whatever for thinking that Congress intended to treat it. It was apparently, a recognized difference between the status of a per annum
46 employee with his relatively secure tenure, and a per diem craftsman.

We conclude, therefore, that the Public Resolution of June 29, 1938, did not deny to the plaintiff Kelly his right to holiday pay in addition to the pay earned by him when he worked on holidays.

From what we have said it will be gathered that we do not agree with the Government's argument that the repealer provision of the 1938 Resolution, in some way not quite clear to us, supports the Government's interpretation of the Resolution.

We now consider the second branch of the plaintiff Kelly's claim. It involves the application of Section 23 of the Act of March 28, 1934, 48 Stat. 522 which reads as follows:

> The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half.

We have had occasion to consider Section 23 in earlier cases. *Townsley* v. *United States*, 101 C. Cls. 237, affirmed 323 U. S. 557; *Hearne* v. *United States*, 107 C. Cls. 335; *Gray* v. *United States*, 110 C. Cls. 661; *Poggas* v. *United States*, No. 47652, decided December 5, 1950, rehearing denied March 6, 1951. A reading of this Section indicates that it was intended to improve the conditions of working men, and, no doubt, it has had that result. Consideration of the litigation concerning it makes it even clearer that it has improved the standard of living of many lawyers.

As we have said, the Public Printer, as he had the power to do under the Act of June 7, 1924, 43 Stat. 658; 44 U. S. C. 40, made an agreement, effective October 27, 1924, with the employees in the Government Printing Office which provided that employees required to work on a holiday should receive time and one-half for the time worked, in addition to their "gratuity pay" for the holiday as provided by law. The employees were so paid until on March 28, 1934, Section 23 was enacted. On April 9,
47 1934, the Public Printer requested an opinion from the Comptroller General as to whether the additional half time could continue to be paid. The Comptroller General replied, 13 Comp. Gen. 295 in the negative, saying, in effect, that the provision in Section 23, that time worked beyond 40 hours in a week should be overtime and should be paid for at time and one-half meant that no time within the forty hours could be paid for at more than straight time, even if it was worked on a holiday.

We think the Comptroller General's interpretation was erroneous. The time and one-half pay for work on holidays had no relation

to overtime. It was penalty pay in the sense that it would discourage the employer from unnecessarily requiring work on holidays, and was premium pay in the sense that it rewarded the employee for giving up a holiday that his neighbors were enjoying. In the former respect it resembled overtime, and in the latter respect it resembled premium pay for work on a night shift, or on Sunday, when most people are not working. But it was not overtime in the sense in which that word is used in industry, or in any sense in which it has been consistently used by Congress.

We do not understand, and no explanation has been offered, why, if Section 23 struck down the provision of the 1924 agreement as to holiday pay, it did not likewise invalidate the provision of the same agreement for 15% additional premium pay for work at night, within the regular forty-hour week. This was "overtime", if the word is to be stretched, just as much as the premium holiday pay was, yet it was regarded as unobjectionable. See 23 Comp. Gen. 962.

In the Act of January 13, 1883, C. 23, 22 Stat. 402, it was provided:

> That, for extra work, ordered in emergencies and performed on Sundays or legal holidays, or between the hours of midnight and eight antemeridian, excepting that done by regular organized night forces, the Public Printer is hereby authorized to pay such extra prices as the custom of the trade and the justice of the case may require.

Congress there authorized the Public Printer to award premium pay in a variety of situations, for work done at unusual times. There was no thought or mention of overtime, and, indeed,
48 in 1883 there was probably no custom in Government or industry to pay any increased rate for work beyond regular daily or weekly hours.

In the Act of February 13, 1911, as amended, 41 Stat. 402 C. 61, 19 U. S. C. 267, Congress referred to overtime services of Customs inspectors and other Customs employees and then went on to define such services as including night, Sunday, and holiday time. The Act of March 2, 1931, 46 Stat. 1467, relating to immigration inspectors used the word overtime in the same way, but defining what was meant.

In the Act of March 4, 1925, C. 549, § 1, 43 Stat. 1300, 44 U. S. C. 75 it was provided:

> Employees in the office of the Superintendent of Documents may be paid compensation for night, Sunday, holiday, and overtime work at rates not in excess of additional compensation for such work allowed other employees of the Govern-

ment Printing Office under the provisions of section 40 of this title.

Here it is plain that Congress did not regard holiday rates as overtime rates. But the fact that Congressional usage of the word has not been entirely consistent is no ground for assuming that in 1934, in aiming at an entirely different objective, Congress succeeded in striking down an arrangement which had been in effect for ten years, had not been criticized, and was not even remotely in the mind of Congress when it enacted Section 23.

On December 12, 1945, the Secretary of the Navy addressed an urgent plea to the Comptroller General, on behalf of the War and Navy Departments, saying that "inability to authorize a premium rate for holiday work has very seriously impaired the efficiency" of certain facilities of the services mentioned in the letter. In response the Comptroller General, on February 7, 1946, 25 Comp. Gen. 584, restudied the question. He recognized, p. 589, that a distinction between overtime pay and premium pay for holiday work had been maintained by commercial industry, and that such classes or categories of pay had been considered co-equal with, and independent of, each other. But, he thought, Congress had not made this distinction until it enacted the Federal Employees Pay Act of 1945, 59 Stat. 295, 296, 298, where it provided in separate sections, 201 and 302 for overtime and holiday pay
49 respectively. The 1945 Act had no application here pertinent to employees such as the plaintiff Kelly. See Section 102 (c). But the Comptroller General concluded that the recognition by Congress in the 1945 Act, though in an unrelated connection, of the difference between overtime pay and premium pay for holidays justified a new interpretation of the 1934 Act, the new interpretation being effective in 1945.

This process of interpretation, whereby the meaning of a 1934 statute is changed, only prospectively, in 1945 because Congress showed in 1945 that it then knew the correct meaning of words which it had used in 1934 is unusual. It would be preferable to infer that since Congress showed in 1945 that it knew the meaning of the words it had used in 1934, it had known it all the time, and that any mistake as to the meaning had not been that of Congress, but of the person who read the words and attributed the mistaken meaning to them. We conclude that Section 23, when enacted, and thereafter, had nothing to do with premium pay for holidays, and did not invalidate the agreement which the Public Printer had with his employees.

The Government urges that Kelly's right to sue is barred by laches. We think not. In *Hearne* v. *United States*, 107 C. Cls. 335, 400, this Court rejected a similar contention in a suit by an em-

ployee of the Panama Canal under Section 23. We said there that, in the confusion of administrative rulings with regard to the meaning of Section 23, it would be unfair to require a workman to know, at his peril, his statutory rights when the responsible officials of the Government could not see them clearly. In this case the doctrine of laches seems peculiarly inapplicable, since only holiday pay is involved, and it is hardly possible that the Public Printer could have avoided, to any substantial degree, the holiday work, even if he had known that the work would cost more than he supposed it would.

The plaintiff Kelly, having already received the equivalent of his statutory holiday pay, is entitled to recover, pursuant to the 1924 agreement, one and one half times the day rate for the holidays on which he worked. Entry of judgment will be suspended to await the filing of a stipulation of the parties showing the exact amount to which the plaintiff is entitled.

It is so ordered.

HOWELL, *Judge*; and LITTLETON, *Judge*, concur.

WHITAKER, *Judge*, dissenting:

I cannot agree that plaintiff is entitled to two and one-half times his regular pay for work done on holidays. I agree that Section 23 of the Act of March 28, 1934, did not affect these workers' right to the day rate plus 50 percent for all holiday work; but I cannot agree they are also entitled to holiday gratuity pay. Their rights are governed by Public Resolution 127, approved June 29, 1938 (52 Stat. 1246), and this resolution gives them gratuity pay only when they are "relieved or prevented" from working on a holiday. It does not give them gratuity pay when they do work.

I conceive it to be our duty to abide by what Congress said and not by what we may think it meant to say. Where the language of an act is ambiguous, courts may have recourse to things extraneous of that language to determine the congressional intent; but where the language is plain, there is no warrant to go beyond it in order to show that Congress did not really mean what it said. Where the words used may mean one thing or another, then we may go behind them to ascertain which of the meanings was actually intended. But where language is susceptible of only one meaning, that meaning must be ascribed to it, even though it may seem strange to us that Congress should have had such an intent.

I think the 1938 resolution is clear and unambiguous and must be taken to mean just what it says. Under it these workers are entitled to receive holiday gratuity pay only when "relieved or prevented from working solely because of the occurrence of a holiday * * *." 52 Stat. 1246. Since these employees were not prevented or relieved from working on the holidays involved here, but

on the contrary they worked on those days, they are not entitled to the gratuity pay in addition to holiday premium pay. The wage agreement provided that they were to receive the day rate plus 50 percent for holiday work "in addition to their gratuity pay
51 for the holiday as provided by law"; but after June 29, 1938, gratuity pay was no longer provided by law for workers who actually worked on holidays. They were, however, still entitled to time and one-half, under the wage agreement.

The Resolution of 1938 was intended to correct the situation arising from the President's order excusing Federal employees from work on December 24, 1937. The Comptroller General had ruled that per diem employees could not be paid for that day because it was not one of the holidays specified by existing statutes for which an employee was entitled to gratuity pay. An Act was introduced to give them gratuity pay for that day only, to wit, December 24, 1937, but it was suggested by the Civil Service Commission that it would be better to pass an act applying to all holidays. A draft of such an act was enclosed in its communication to Congress. Congress adopted the suggestion and incorporated it in Public Resolution 127. This resolution gave gratuity pay only for holidays on which employees did not work.

The intention of the first of these resolutions passed in 1885 was to give per diem employees a day's pay for a holiday. Whereas employees paid on an annual basis received their regular pay whether they worked on a holiday or not, per diem employees did not. The original resolution was intended to put per diem workers on a parity with per annum employees. It was not intended to prefer them over per annum employees. A per annum employee who worked on a holiday received no extra compensation therefor.

The Resolution of 1938 carried out the intent of the original resolution and made it plain that per diem employees were entitled to gratuity pay only when they did not work on a holiday.

I do not agree that the congressional intention was different from the congressional expression.

I would hold that when these employees do not work on a holiday, they are to be paid the holiday gratuity; and that when they do work on a holiday, they are to be paid the day rate plus 50 percent. That is how I read the statutes.

It seems inequitable that an employee who does not work on a holiday should receive a full day's pay, whereas an employee who is required to work shall be paid only time and a half, or
52 50 per cent more than is received by the one who does not work; but that is the way I read the statute. It would seem that the employee who is called back to work on a holiday should receive gratuity pay, plus regular pay, but the statute does

not so read, and only Congress has the power to correct what does seem to be an inequity.

JONES, *Chief Judge*, concurs in the foregoing dissenting opinion.

STIPULATION OF AMOUNT DUE—Filed April 17, 1951

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the amount of compensation due John Stuart Kelly is One Hundred Seventy-Two Dollars ($172.32) and Thirty-Two Cents. Such compensation is calculated upon the basis of one and one-half times the day rate for work of the type performed by Plaintiff Kelly upon the following holidays:

September 6, 1943	Labor Day
November 11, 1943	Armistice Day
November 25, 1943	Thanksgiving Day
February 22, 1944	Washington's Birthday
May 30, 1944	Memorial Day
July 4, 1944	Fourth of July
September 4, 1944	Labor Day
November 23, 1944	Thanksgiving Day
January 1, 1945	New Year's Day
February 22, 1945	Washington's Birthday

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53-54 JUDGMENT OF THE COURT—Filed May 1, 1951

It appearing that on April 3, 1951, the Court filed special findings of fact with an opinion holding that plaintiff, John Stuart Kelly, was entitled to recover but suspended the entry of judgment to await the filing of a stipulation by the parties showing the exact amount to which plaintiff is entitled under the Court's decision; and it further appearing that on April 17, 1951, a stipulation was filed in which it is stated that the amount due is $172.32, now, therefore,

IT IS ORDERED this first day of May, 1951, that judgment be and the same is entered for plaintiff, John Stuart Kelly, in the sum of One Hundred Seventy-two Dollars and Thirty-two Cents ($172.32).

BY THE COURT

(S.) MARVIN JONES,
Chief Judge.

55 Clerk's Certificate to foregoing transcript omitted in printing.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 940320

57 Supreme Court of the United States

[Title omitted.]

Order allowing certiorari

Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Claims is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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U. S. GOVERNMENT PRINTING OFFICE: 1951